

**REMARKS**

The Examiner will note that formal drawings are included with this response as are two newly cited references. The newly cited U.S. Patent 5,148,844 is directed to a flail drum system wherein chains are used for flailing the bark for logs, for example. The chains which are mounted flexibly, not rigidly, for a different purpose, are not considered applicable to the function performed by the presently claimed invention, and the patent is cited only in an abundance of precaution. Also cited is the foreign counterpart No. 8800928(U) of U.S. Patent 4,892,260 cited by the Examiner, as in the U.S. patent it appeared that certain figures were omitted from the drawings filed.

The indication by the Examiner of the allowability of claims 19-22, if rewritten to reflect the terminology preferred, is noted and appreciated. In this respect, the specification has also been amended to reflect the lexicography. Applicant had used the terms "fragmenting knife or knives" in connection with the term "hammer" which included the hammer leg or handle and the hammer head. In these amendments, there is no intent to define over any prior art and these changes are made without prejudice since applicant's assignee, in the plant and in dealing with the trade, uses the term "hammer" to mean both the hammer handle and the hammer head. Without limiting in any way the scope of interpretation to be according these terms, applicant has now used what apparently is a more common lexicon is the U.S. Patent Office.

The applicant had also used the term "spacer" to describe both the members 72 in Figure 39, as well as the same members 72a and 72b to which individual attention is directed in Figures 46 and 46A. In addition, applicant has referred to the members 74 as deflector spacer members. Again, this is common terminology in applicant's business.

In regard to claim 20, on page 20 of the applicant's specification, it is pointed out (beginning in line 3) that the axial spaces between members 72 are in radial alignment with the hammers mounted along the discs 72 and rods E. Applicant discloses the shape of these deflectors in Figure 45 and shows them in Figures 39 and 46. So, because disclosed in connection with the embodiment of the invention illustrated in Figures 39-47, it is believed that the rejection of dependant claim 20 in view of 35 USC 112 is not properly based and should be withdrawn.

Claim 32 was rejected under 35 USC 103(a) as being unpatentable over Brewer (Figure 4), however, the claim specifies that the hammer supports are mounted at the sides of the rotors to partly overlies the rotors axially. The examiner's suggested modification of the Brewer patent of providing spacers between the knife supports does not address this and does not address what applicant is claiming. In the Brewer patent, the members 42 (which cooperate with the rotated blades) are fixed. The blades 44 on the rotary members 60 must pass between the spaced apart stationary knives 44 as shown in Figure 5. Thus, these knives could not

be wider than the members 44 through which they must pass. The rotary knives 90 could not possibly have axially intersecting paths of travel. In applicant's Figures 46 and 46A, the positions of knives which are circumferentially displaced are shown in a position in which their paths of travel intersect, but the knives never do. Because, in the Brewer patent, the rotors 60 are spaced apart such as to travel on opposite sides of the fixed knives, there is no possibility of hammer supports being mounted on the sides of the members 60. The suggested modification of the Brewer patent finds no suggestion except in the applicant's disclosure and could not be made without completely destroying the function of the Brewer apparatus. For these reasons it is considered that the 35 USC 103(a) rejection as unpatentable over the Brewer disclosure is not tenable and should be withdrawn.

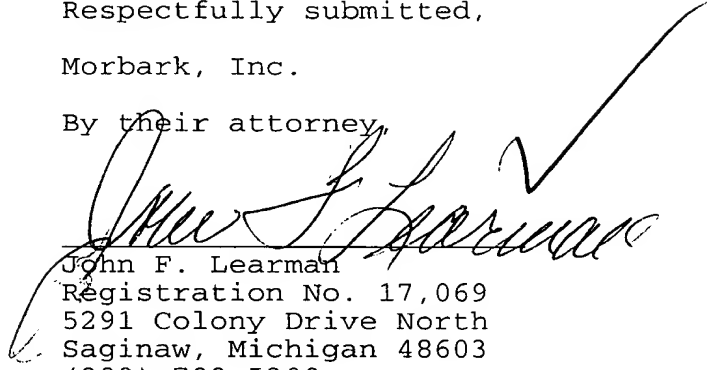
As indicated earlier, the present claims are directed to the embodiment of the invention shown in Figures 39, 46A, 46 and 47 and all claims are readable thereon. For the reasons discussed, it is submitted that the application is now in condition for final approval.

The Patent Office is authorized to charge or refund  
any fee deficiency or excess to Deposit Account No. 50-0852.

Respectfully submitted,

Morbark, Inc.

By their attorney,



John F. Learman  
Registration No. 17,069  
5291 Colony Drive North  
Saginaw, Michigan 48603  
(989) 799-5300

cam